Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

TO: The Commission

Comments of the National Association of Broadcasters

The National Association of Broadcasters ("NAB")[1] submits these comments on certain issues in the Commission's *Further Notice of Proposed Rule Making*. In the *Further Notice*, the Commission seeks comment on a proposal it first made in 1992 to increase the benchmarks for attribution of holders of voting stock and of certain classes of passive investors. NAB is unaware of any party that has expressed opposition to the Commission's proposals in the almost five years since they were originally announced, while a large number of parties have filed comments strongly supporting changes in the attribution benchmarks.

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[1] NAB is a nonprofit incorporated association of broadcast stations and networks. NAB serves and represents the American broadcasting industry.

The Commission suggests (*Further Notice* ¶ 36) that it seeks evidence that changing the attribution benchmarks would generate a substantial amount of new investment in broadcasting companies. With respect, this is not the correct inquiry. Although removing barriers to capital formation for broadcast stations was the Commission's goal in seeking comments on proposed changes to the attribution benchmarks, the question it should focus on is not the level of investment that might result (for that may change with differing market conditions), but instead whether altering the attribution benchmarks would adversely effect the Commission's regulatory interests. If the Commission can accomplish its goals of monitoring the effective ownership of broadcast stations with increased attribution benchmarks, then it has no reason to continue to impose disclosure and recordkeeping requirements on holders of minor and non-controlling interests in broadcast companies.

Deeming an investment attributable does impose significant burdens on investors. First, holding an attributable investment in a broadcasting station restricts the other investments that an owner can make. For example, if a shareholder holds an attributable interest in a broadcasting company, he or she must then avoid substantial investments in other companies that may own broadcasting stations, cable systems, or newspapers in the same markets because, if the latter investments were deemed attributable, the investor could inadvertently violate the Commission's duopoly, one-to-a-market, or cross-ownership rules. Further, holders of attributable interests in broadcasting stations are subject to reporting requirements that may require them to institute elaborate procedures to ensure that FCC-required information about non-broadcast activities and legal proceedings will be reported to the Commission. Thus, a non-controlling investor may have significant disincentives to acquiring an attributable interest in a broadcast station.

There is no reason to believe that increasing the attribution benchmarks as the Commission has proposed would allow entities to acquire effective but unattributed control of broadcast stations. The Commission will continue to deem all directors and officers of broadcasting companies and their parents to have attributable interests. It is difficult to envision how an investor holding ten percent or less of the voting stock of a company could exercise effective control over that company if the investor or his representatives are neither officers nor directors of the company.

Similarly, the proposed increase in the attribution benchmark for institutional passive investors from ten to 20 percent of a company's voting stock posses no risk that institutions will control broadcast stations without the Commission's knowledge. Licensees with large holdings by institutional investors will continue to be required to certify that they have not sought to exercise control in order for the higher attribution benchmark to apply. As with small holdings of voting stock by non-passive investors, the Commission will still have full knowledge of the identities and interests of the individuals who in fact are controlling broadcast stations through its requirement that directors and officers all be deemed attributable.

The Commission also seeks comment on a staff study of the impact of the proposed changes in the attribution benchmarks that focuses on changes in the number of currently reportable attributable owners of television stations that would not be deemed attributable under the proposed rules. While the study shows that the number of attributable owners of broadcast stations would decline if the attribution benchmarks were raised, this entirely expected result has little, if any, bearing on whether the Commission should adopt the proposed changes.

The Commission has no intrinsic interest in the number of entities which are deemed to be attributable owners of broadcasting stations; its interest is only in ensuring that it knows who is controlling stations and in avoiding circumvention of its ownership rules. Thus, if a company would have one attributable shareholder under the current rules and none under the Commission's proposed rules, that conclusion says nothing about whether the Commission would still be able accurately to track ownership of broadcast stations, for it may be that no one of the shareholders of the company exercise control.

The study also suggests that there may not be a large number of current investors whose attribution status would be affected by the proposed changes in the benchmarks. If, as the Commission and others have argued, the current benchmarks discourage investors, it is to be expected that there would be relatively few investors who do not have operating interest in stations who have made themselves subject to the Commission's ownership and reporting requirements. Indeed, the information contained in the study concerning passive investors strongly suggests that the current benchmarks do affect investment. The study showed that by far the largest number of passive investors in television stations owned between five and ten percent of their companies, the level just below the ten percent attribution benchmark. If, as is reasonable to assume, institutional investors wish to avoid the burdens associated with attributable ownership, they would be likely to restrict their investments to non-attributable levels. The Commission's study indicates that passive investors have in fact acted in this fashion. Thus, increasing the attribution benchmarks will make it easier for broadcasting companies to attract capital investment.

NAB is attaching a statement of Bishop Cheen, a leading analyst of investment in broadcasting and other media, confirming our conclusion that increasing the attribution benchmarks would ease restrictions on broadcast investment. Mr. Cheen concludes that "increasing the attribution benchmarks for active and passive holders of voting stock would result in increased investor interest in broadcast companies." He points out that there have been periods when debt financing of broadcast companies has been relatively unavailable. Therefore, removing barriers to equity investments are important to meet the capital needs of the industry. In particular, Mr. Cheen points out that changing the attribution benchmarks would aid companies seeking to acquire stations in small and mid-sized markets where access to capital has always been difficult. Mr. Cheen's expert analysis thus fully supports the Commission's proposed changes to the attribution benchmarks.

Conclusion

The need for companies in the broadcasting industry to attract capital is steadily increasing. As broadcasters face increasing competition from other program suppliers, they must invest in new equipment and new and innovative programming. For television broadcasters in particular, the capital demands of conversion to digital television will be enormous. If local, over-the-air broadcasting is to continue to be a viable competitor in the multi-channel environment we are developing, they must also be able to compete in the capital markets. The Commission's proposals to increase the attribution benchmarks for voting stock will help broadcasters to attract different forms of investment. The Commission should therefore promptly adopt these longstanding proposals.

Respectfully submitted,

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Attachment

STATEMENT OF BRUCE BISHOP CHEEN, FIRST UNION BANK IN RE PROPOSED FCC ATTRIBUTION RULE CHANGES

I am Bruce Bishop Cheen and I submit this statement in support of the Comments of the National Association of Broadcasters concerning the FCC's broadcast attribution benchmarks

I am Vice President of First Union Capital Markets where I specialize in analysis of media companies. Prior to joining First Union in 1995, I was for ten years a senior analyst for Paul Kagan Associates and Vice President of Kagan Media Appraisals. At Kagan, I analyzed the economics and values of public and privately held companies involved in broadcasting, publishing, wireless cable, consumer media electronics, and interactive multimedia. My experience includes managing broadcast stations and reporting for ABC News and Special Events. I hold a BS in Broadcasting and an MS in Communications from The University of Florida, and an MBA from the University of Miami.

In the *Further Notice of Proposed Rule Making*, the FCC asks for information that would "verify the link between raising the attribution benchmarks and precipitating additional capital investment." The FCC's attribution rules do restrain investment because investors who do not exercise control over a broadcast licensee, but who have that license attributed to them, have restrictions placed on their other investment opportunities. For example, an investor who owned more than five percent of a corporate broadcast licensee would, by the fact of that investment, be barred from taking a significant position in the stock of a company that owned a newspaper in any of the broadcasters' service areas, even if the investor did not have control over either company. Further, cognizable owners must disclose their investments to the Commission, as well as certain types of litigation in which they may become involved

In my judgment, based on years of evaluating investments in communications firms, increasing the attribution benchmarks for active and passive holders of voting stock would result in increased investor interest in broadcast companies It is important for the FCC to take steps to do away with unnecessary barriers to investment in broadcasting because while debt financing has at times (such as now) been readily available, there have been other periods like the early 1990's when sources of debt financing have dried up. Increasing the options for equity investment would, particularly in such periods, permit the creation of new types of investment vehicles without the burdens that are created when an investment becomes cognizable under the ownership rules.

As I evaluate potential investments in telecommunications companies, one of the issues that I must address is whether a particular investment would run afoul of any of the Commission's ownership rules, particularly with respect to entities that may have investments in several different types of communications providers. The proposed increase in the attribution benchmarks would allow more investors to help finance broadcasting without concerns about inadvertent violations of the rules.

Perhaps most importantly, a higher attribution benchmark would benefit broadcast entrepreneurs focused on small to mid-sized markets. Those are ventures where access to capital formation has always been relatively elusive. Higher limits on unattributed ownership would result in more availability of the most valuable capital source, equity, which in turn would attract more commercial credit capital.

Bishop Cheen

February 6, 1997